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IN THE CIRCUIT COURT FOR THE COUNTY OF BERRIEN, STATE OF MICHIGAN

No. 6352

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs.

HAROLD ANDERSON,
Respondent-Appellant

REPLY TO APPELLEE'S STATEMENT AS TO JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Appellee's Statement as to Jurisdiction and Motion to Dismiss or Affirm is limited exclusively to the claim that the questions presented by appellant are of an unsubstantial nature. In support of its claim, it makes three points:

1. That the Circuit Court for the County of Berrien on all the evidence found appellant guilty as charged of trying to tip over the car of the complaining witness.

This fact is irrelevant to the question of whether appellant's attack on the statute involved raises substantial constitutional questions, without regard to the charge or the evidence under it. Appellant's claim, under *Thornhill* v. *Alabama*, 310 U. S. 97 and related cases which it has cited, is that the statute (Section 352 of the Michigan Penal Code) on its face is subject to specified constitutional infirmities. The finding of guilt on the evidence in the particular case does not eliminate these constitutional infirmities.

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2. That the statute involved has been sustained by the Supreme Court of Michigan against challenges that it is in violation of the federal constitution.

It should be noted preliminarily that appellee has quoted the statute as amended, and not the statute under which appellant was convicted and which he questions on this appeal. The difference in the original and the amended statute is of importance because the amendment shows the legislative recognition of the indefiniteness of the original statute in the respects which appellant has pointed out in his statement as to jurisdiction.

Appellee cites *People* v. *Washburn*, 285 Mich. 119, 123 ALR 311 (involving the original statute), in which the Supreme Court of the United States denied the petition for appeal 305 U. S. 577. As pointed out by appellant in his Statement as to Jurisdiction, only the *petition* for appeal was denied in that case. The appeal itself was never perfected, as an examination of the papers in this case on file in the Supreme Court of the United States demonstrates.

Appellee also cites *Cole et al.* v. *State*, 216 S. W. 2d 402, after mandate from the Supreme Court of the United States 333 U. S. 196, in which the Supreme Court of Arkansas upheld Section 1 of the Arkansas statute there involved against the challenge that it was indefinite and violative of state and federal constitutions.

But the Arkansas statute is different in critical respects from the Michigan statute here involved. The Arkansas statute provides in Section 1:

"It shall be unlawful for any person by the use of force or violence or threat of the use of force or violence to prevent or attempt to prevent any person from engaging in any lawful vocation within this State. . . ." (Act 193, Acts of Arkansas 1943).

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The Michigan statute here involved provides:

"Any person who shall by threats, intimidation *or otherwise*, and without authority of law, *interfere with* or *in any way* molest or *attempt to interfere with, or in any way molest or disturb*, without such authority any mechanic or other laborer in the quiet and peaceable pursuit of his *avocation* shall be guilty" (Michigan Penal Code, Section 352, Act No. 328, Public Acts of 1931, italics supplied).

The italicized words in the Michigan statute, which do not appear in the Arkansas statute, are the basis of the questions presented in the case at bar. Obviously, a determination by the Supreme Court of Arkansas that the Arkansas statute is valid under the federal constitution is not determinative of the validity of the different Michigan statute. In any event, counsel is informed the decision of the Supreme Court of Arkansas in the *Cole* case on remand is now the subject of a further petition for certiorari to the Supreme Court of the United States.

For the same reason, it is immaterial that the Court of Criminal Appeals of Texas sustained the constitutionality of a Texas statute (Art. 1621b of Texas Penal Code, as amended by Ch. 100, Acts 47th Legislature, Regular Session, Vernon's P. C. Article 1621b), cited by the Supreme Court of Arkansas as identical with the Arkansas statute, with the exception of an emergency clause. The Texas and Arkansas statutes are critically different from the Michigan statute and a determination by the Texas and Arkansas Courts or even the dismissal of an appeal by the Supreme Court of the United States in a case involving the Texas statute for want of substantial Federal question (*Sanford* v. *Hill*, 316 U. S. 647), is not determinative in any way of the substantial nature of the questions presented in the case at bar.

3. That three recent decisions of the Supreme Court of the United States (*A. F. of L.* v. *American Sash & Door*

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Co., 335 U. S. 538; *Lincoln Federal Labor Union et al.* v. *Northwestern Iron & Metal Co.*, No. 47, October Term, 1948 (decided January 3, 1949); *Whitaker* v. *North Carolina*, 335 U. S. 525), show that no substantial federal question is here involved.

But those decisions involved a North Carolina statute and Nebraska and Arizona constitutional amendments which prohibited denial of opportunities in employment because of membership or non-membership in a labor organization and further prohibited agreements excluding persons from employment because of such membership or non-membership. The validity of such enactments and amendments is not even remotely involved in the case at bar.

It is respectfully submitted that the questions presented by the appeal in the case at bar are of a substantial nature, warranting a review by the Supreme Court of the United States of the decision of the Circuit Court for the County of Berrien, Michigan, which upheld the Michigan statute here involved against timely challenges as to its constitutionality under the Fourteenth Amendment to the Constitution of the United States, and that appellee's motion to dismiss or affirm should be denied.

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